

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 03-57

March 20, 2003

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Case Handling Instructions for all Cases Currently Being
Coordinated by the Division of Operations-Management or a
Regional Office

This memorandum sets forth instructions for cases currently being coordinated by the Division of Operations-Management or a Regional Office. Attached as an Appendix is a concise list of coordinated cases to detach and use as an easy reference guide.

I. Armored Transport, Inc.

- A. Charges have been filed by Currency and Security Handlers Association (CASHA) in Regions 16, 20, 21, 31 and 32, alleging that Armored Transport, Inc., (ATS) has violated Sec. 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with CASHA. A consolidated complaint has issued in many of these cases and is being handled by Region 31, the lead Region for these cases.
- B. Deputy Assistant General Counsel Joseph Baniszewski is coordinating these cases. Please refer to OM 99-37 for the procedures to follow regarding the handling of these cases.

II. Beck Cases Involving the Thomas Havey Accounting Firm

- A. Charges have been filed with Region 6 in Teamsters Local 250 (Shenango Presbyterian Seniorcare), Case 6-CB-10852, and International Brotherhood of Teamsters, (Shenango Presbyterian Seniorcare), Case 6-CA-10852, alleging that an audited breakdown of chargeable and non-chargeable expenditures under Beck should be rejected on the sole ground that the audit was performed by the Thomas Havey accounting firm because of alleged criminal activity associated with that firm. A Proffer of Facts introduced in United States v. Massey, Criminal Case No. 02-0348 in the United States District Court for the District of Columbia details allegations of certain criminal conduct of a member of the Havey accounting firm in the course of that firm's preparation and submission to the Department of Labor of false LM-2 Reports that conceal and hide from the Iron

Workers Union membership and the Department of Labor the true and full amount of Union expenditures for Union officers' entertainment.

- B. The Havey firm, a nationwide firm, performs audits for many unions of the allocation of chargeable and non-chargeable expenditures required to fulfill Union obligations under Beck. An additional charge was recently filed in Region 8 and more may be filed, alleging that audits of chargeable expenditures done by the Havey accounting firm are unreliable.
- C. If you have or receive such a charge, please fax a copy of the charge to Regional Director Gerald Kobell and Deputy Assistant General Counsel Jane Schnabel. If you already have such a charge, please include in this notification a description of the status of the case. If you have any questions, please contact Director Kobell or DAGC Schnabel.

III. Beverly Enterprises

- A. Region 6 will continue to be the lead Region with respect to all newly filed charges against Beverly and any of its subsidiaries. See OM 02-38, "Compliance and Possible Violations by Beverly California Corporation f/k/a Beverly Enterprises with Corporate wide Order in Beverly II and Beverly III." Regions are to advise Region 6 and the Contempt Litigation and Compliance Branch of all arguably meritorious charges at all facilities covered by the corporate wide Judgment in Beverly II and Beverly III prior to taking any action, including approval of a non-Board adjustment.
- B. Deputy Assistant General Counsel Jane Schnabel is coordinating the Beverly cases for Operations.

IV. Cintas Corporation

- A. Section 8(a)(1) and (3) charges have recently been filed by the Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (UNITE!), hereinafter UNITE, in Regions 1, 4, 5, 6, 7, 9, 11, 12, 13, 16, 20, 21, 22, 25, 28, 29, 32 and 34 against Cintas Corporation, hereinafter Cintas, an employer engaged in the laundry business and the supply of uniforms and other textiles. The charges arise out of an ongoing organizing campaign by UNITE among the employees of Cintas. Some of the charges that were filed allege that Cintas engaged in surveillance of hand billing activities, discouraged or prohibited employees from reading or receiving handbills and prohibited or interfered with hand billing by representatives of UNITE. Other charges allege that Cintas engaged in unlawful interrogations and other Section 8(a)(1) threats, and that it has disciplined or

discharged named employees because of their activities on behalf of UNITE in violation of Section 8(a)(3). Region 4, Philadelphia will be the lead Region coordinating the handling of these charges.

- B. If similar charges have been filed in your Region against Cintas, please fax a copy of your charges to Regional Director Dorothy Moore-Duncan, Region 4 and to Assistant General Counsel Jim Paulsen in Operations. Each Region should complete the investigation of its charges. After the completion of the investigation, copies of agenda minutes and FIRs should be faxed to Region 4 prior to implementation and Regions should not proceed to implement decisions or approve settlements or withdrawals until clearance is received from Regional Director Moore-Duncan. Any question about coordination of these cases should be referred to Assistant General Counsel Paulsen.

V. Great Atlantic News, L.L.C. a/k/a The Newsgroup, Inc.

- A. Section 8(a)(1), (3) and (5) charges have been filed in several Regions against Great Atlantic News, L.L.C. a/k/a The Newsgroup, Inc., and against United Magazine Company d/b/a Triangle News Company, Incorporated. The charges arise out of the takeover of United Magazine Company (United) operations by Great Atlantic News (Great Atlantic), Great Atlantic's refusal to recognize and deal with various locals of the International Brotherhood of Teamsters and Great Atlantic's refusal to hire the former employees of United. To date, we have received copies of charges filed in Regions 6, 7 and 8. Region 6, Pittsburgh, will be the lead Region coordinating the handling of these charges.
- B. If similar charges have been filed in your Region, please fax a copy of your charges to Regional Director Kobell, Region 6 and to Deputy Assistant General Counsel Jane Schnabel in Operations. Each Region should complete the investigation of its charges. After the completion of the investigation, copies of agenda minutes and FIRs should be faxed to Region 6 prior to implementation and Regions should not proceed to implement decisions or approve settlements or withdrawals until clearance is received from Regional Director Kobell. Any question about coordination of these cases should be referred to Deputy Assistant General Counsel Schnabel.

VI. Greyhound Lines, Inc.

- A. Most of the Greyhound cases relating to the 1990 strike have been completed and are closed. The lead case, Case 30-CA-10681-2, is still open pending distribution of the backpay under the parties' settlement agreement. Region 32 is working to finalize the backpay distribution for all discriminatees pursuant to the settlement. Please

refer any compliance questions to Supervisory Compliance Officer Andrew Young in Region 32.

- B. Region 30 will continue to assist other Regions with the interpretation of the agreement and will provide background to those Regions having questions involving related Greyhound cases.
- C. Inquiries related to the 1990 strike cases should be directed to Assistant to the General Counsel Shelley Korch for further referral.

VII. International Union of Elevator Constructors (IUEC)

- A. As set forth in OM 03-48, dated February 24, 2003, a dispute has arisen between the International Union of Elevator Constructors (IUEC), and many of the employers who are signatories to the most recently negotiated national agreement concerning payment of "Plus Pay." "Plus Pay" is pay levels over and above the rates in the contract. IUEC Locals have filed charges alleging as violative of 8(a)(3) and (5) Employer changes to "Plus Pay", such as raising and/or lowering payment rates or completely ceasing the payment of "Plus Pay." The names of some employers who may be signatories to contracts with the IUEC and who may be named in similar charges are listed in OM 03-48.
- B. Region 17 is the coordinating Region for all charges raising "Plus Pay" allegations. In Operations-Management, Deputy Assistant General Counsel Yvette C. Hatfield is coordinating these cases.
- C. Regions should send copies of all charges involving IUEC "Plus Pay" issues to Region 17 (by e-mail or fax at 913-967-3010) and provide the name and telephone number of the Regional agent to contact.
- D. Enter the word "elevator" under Office Designation # 2 in CATS for that case to allow it to be easily tracked and properly update the parties in CATS.
- E. Subsequent to the issuance of OM 03-48, Region 17 determined to submit to Advice issues related to two employers, Otis and KONE, Inc. Region 17 will send to all Regions who notify it that they have a charge involving "Plus Pay" issues a copy of the Agenda Outline in Otis which details the issues to be submitted to Advice and a copy of the Advice submission when it issues.
- F. Region 17 will obtain all national negotiation evidence from the national union and make that evidence available to all Regions who notify it that they have "Plus Pay" issues.

- G. After Region 17 sends the Regions the national union's evidence as to national negotiations, they should obtain the Charging Party's evidence from local unions, as set forth in OM 03-48, item (5), at pp. 2-3.
- H. After obtaining the local union evidence, Regions should hold the case in abeyance, with an appropriate entry in CATS, until Advice determines the merits of the Otis and KONE cases. That decision will provide subsequent guidance for all cases.
- I. After Advice reaches a determination on the merits in Otis and KONE, all Regions should complete their investigations, which would include obtaining the Employer's evidence with respect to all issues except national negotiations.
- J. Each Region should then make a tentative determination on the charges and forward the determination to Region 17 for coordination before advising the parties of any determination.

VIII. J. D. Steel Co., Inc. (JD Steel)

- A. As set forth in OM 03-50, dated February 27, 2003, several Ironworker Union Locals have filed charges in Regions 17, 18, 20 and 28 against J. D. Steel Co., Inc., (J. D. Steel), a structural steel erection contractor with job sites at various locations throughout the country. The charges generally allege that the Employer is refusing to consider for hire and/or refusing to hire applicants because of their union membership. The cases involve the Employer's use of an Internet based system for soliciting and screening employment applications and appear to relate to a salting campaign being conducted by the International Association of Bridge, Structural, Reinforcing & Ornamental Ironworkers, AFL-CIO.
- B. Region 25 is coordinating these cases. Region 25 will investigate all the outstanding J. D. Steel cases arising from this situation. Assistant to the General Counsel Shelley Korch will serve as the Operations-Management coordinator.
- C. If a Region has any J.D. Steel cases that have been docketed and are currently pending in the Region, the Region should fax copies of the charges and service sheets to Assistant to the Regional Director, Roger LaForge in Indianapolis and AGC Korch in Operations-Management. Upon receipt of the charge, Region 25 will provide a case number and AGC Korch will arrange for a transfer order. In the event a party presents a charge to a Region (other than Region 25) for docketing after the distribution of this memo, the case should be forwarded to Indianapolis for initial docketing and service. Please e-

mail ARD LaForge to advise him of the new filing and fax a copy of the charge.

- D. Region 25 agents will make the initial contact when the Region receives a copy of the charge. If the investigation of charges already filed in another Region is underway and questions arise as to whether to continue this investigation, please call ARD La Forge for direction. If it is determined, at a later date, that a face-to-face interview with a witness is necessary, Region 25 will contact the appropriate Region and make a specific request.

IX. Midwest Air Traffic Control Services

- A. On July 22, 2002, Region 9 was designated to coordinate the charges filed on July 8, 2002 by PATCO against Midwest Air Traffic Control Services, Inc. d/b/a Midwest ATL Services Inc. in Regions 7, 8, 9, 13, 14, 18 and 30. In Operations-Management, Deputy Assistant General Counsel Helen Marsh is coordinating these charges. All charges alleged essentially the same violation, i.e., a change in insurance benefits. Most charges in Regions 7 and 9 also alleged an 8(a)(3) violation and a later filed charge in Region 9 alleged an 8(a)(5) refusal to bargain.
- B. It is our understanding that all the charges alleging a change in insurance benefits, as well as the refusal to bargain charge in Region 9, have been investigated and dismissed. In the event any Region is still processing a charge alleging that the Employer made changes in insurance benefits, please confer with Region 9 before taking final action. It is not necessary for the Regions to confer with Region 9 in the processing of other charges that are pending or may be filed against the Employer.

X. Overnite Transportation, Inc., and the International Brotherhood of Teamsters

- A. Charges or petitions involving Overnite Transportation, Inc.

The International Brotherhood of Teamsters (IBT) announced the end of its strike against Overnite Transportation, Inc. (Overnite) on October 25, 2002. Accordingly, and as the number of charges filed by the IBT against Overnite has decreased, there no longer is a need to coordinate unfair labor practice charges or representation petitions filed by the IBT against Overnite. Consequently, the coordination procedures described in previous instructions, including the "Early Warning Procedures" described in Memorandum OM 96-57 and OM 96-31 and consultations with Region 18 (Minneapolis), are no longer in effect.

Regions may contact Region 18 if there are questions regarding the prior litigation between these parties or for background regarding this labor dispute.

B. Compliance with a settlement stipulation resolving Section 8(b)(4) conduct by the IBT and its Locals

Region 9 requires your assistance in monitoring compliance with a settlement stipulation resolving Section 8(b)(4) conduct by the IBT and its Locals.

Region 9 coordinated Section 8(b)(4) charges filed nationwide against IBT and its Locals and recently approved a settlement stipulation. Although the parties have complied with the Notice posting obligations, the settlement stipulation requires that IBT and its Locals continue to adhere to its terms until May 17, 2004, whenever they engage in picketing that involves Overnite or neutral employers doing business with Overnite.

Specifically, the settlement stipulation provides that IBT and its Locals must designate a "picket captain," distribute the settlement stipulation and Notice to the pickets, and maintain a comprehensive list of the pickets, including their names, addresses and positions within the unions. The IBT and its Locals are to provide these lists to Region 9 upon the filing of a charge alleging unlawful conduct in connection with future picketing. In addition, the IBT and its Locals are required to take certain affirmative actions to prevent unlawful conduct, including removing the word "strike" from any forms of publicity directed at neutral employers.

Under the terms of the settlement stipulation, the failure of the IBT or its Locals to adhere to its provisions during the relevant period may result in a determination to issue complaint and the subsequent entry of an uncontested Board Order and an enforcing judgment of the appropriate United States Court of Appeals.

Therefore, if charges are filed in your Region that allege conduct by IBT or its Locals that may constitute a violation of the settlement stipulation, please contact Region 9 immediately. Region 9 will continue to coordinate compliance with the settlement stipulation until it expires by its terms in May 2004. In Operations-Management, Deputy Assistant General Counsel Helen Marsh is coordinating these charges.

XI. Pacific Maritime Association (PMA)/ International Longshore and Warehouse Union (ILWU)

- A. International Longshore and Warehouse Union (ILWU) has filed a charge in Regions 21 against Stevedoring Services of America (SSA), a member of the Pacific Maritime Association (PMA), the West Coast multi-employer association. That charge alleges SSA violated Section 8(a)(1) and (5) by distributing copies of the tentative ILWU-PMA collective bargaining agreement in violation of an understanding between ILWU and PMA, and by soliciting non-unit employees to file unfair labor practice charges attacking the terms of that tentative agreement. In addition, certain employees of SSA have filed Section 8(a)(3) charges in Region 27 against PMA and SSA and a Section 8(b)(1)(A) charge against ILWU. Those charges allege that PMA, SSA and ILWU have discriminated and retaliated against the charging parties because of their non-membership in ILWU.
- B. If charges are filed in your Region against SSA, ILWU, or employer-members of the PMA multi-employer bargaining unit that raise these or related issues, please contact Deputy Assistant General Counsels Charles Posner or Joseph Baniszewski in Operations-Management.

XII. R.J.Corman, Inc.

- A. R.J.Corman, Inc. has filed charges against International Union Operating Engineers, Local 150, alleging that Local 150 has engaged in recognitional picketing in excess of 30 days without filing a petition in violation of Section 8(b)(7)(C). Cases are currently pending in Regions 8 and 13. Region 8 is seeking a nationwide 10(l) against the Union for this unlawful recognitional picketing at various locations.
- B. Region 8 is the lead Region. Please fax a copy to Regional Director Fred Calatrello and Deputy to the Assistant General Counsel Gary Muffley.
- C. Each Region should conduct its own investigation and fax a copy of the FIR or Agenda Minute to Region 8 for clearance before implementing the proposed action. Any question concerning the coordination of these cases should be referred to DAGC Muffley.

XIII. "Salting" Cases

- A. Unfair labor practice charges have been filed in various Regions alleging Employer refusal to hire applicants who indicate on their applications that they are "paid" or "unpaid union organizers." See

Memorandum OM 94-73 for guidance in investigating such "salting" cases.

- B. Deputy to the Assistant General Counsel Hugo Voogd is coordinating these cases. While Regions are no longer required to submit dismissal cases to him for clearance, please continue to send copies of all "salting" charges and complaints to DAGC Voogd. See Memoranda OM 95-2 and OM 95-93.

XIV. Sprint/CWA

- A. Region 25 is investigating recently filed charges against the CWA International and its affiliated Local Union, Local 4700, in Evansville, Indiana, alleging that the Unions involved are bargaining in bad faith and are attempting to engage in "coalition" bargaining with other locals throughout the United States. These allegations appear to center on locals in Tennessee/Virginia, North Carolina, Florida, and possibly elsewhere. Similar charges have been recently filed in Region 12 and perhaps other regions.
- B. Region 25 has been designated the coordinating region for these cases. In the event you have charges filed by Sprint against CWA or charges against Sprint, involving this issue, please contact Director Chavarry in Region 25 and provide him with a copy of the charges and information about the status of your investigation. Assistant to the General Counsel Shelley Korch is coordinating these cases in Operations.

XV. UPS/Teamsters Issues Relating to Accretion

- A. Region 9 has received a series of charges against United Parcel Service (UPS) and the Teamsters filed by historically excluded administrative employees who were recently "accreted" into the existing Teamsters bargaining unit by agreement of the parties. Approximately 2500 employees nationwide have apparently been affected by the accretion. The charges may not specifically mention the accretion issue; they could allege Section 8(a)(2), 8(a)(3), 8(a)(5), or 8(b)(1)(A) conduct, including unlawful assistance, unilateral change and union security issues.
- B. Region 9 is the lead region with respect to these cases. Please contact Region 9 Director Richard Ahearn, or in his absence, Regional Attorney Earl Ledford, if you receive or have received charges against UPS and/or Teamsters Locals raising such issues. Please provide the Region a copy of such charges and the status of the investigation(s). DAGC Helen Marsh will address any questions in Operations-Management concerning these coordination efforts.

XVI. USPS Refusal-to-Provide-Information Cases

- A. OM 03-18, dated November 6, 2002, announced new guidelines for handling refusal-to-provide-information charges against the USPS filed by all postal service unions. As set forth in the OM, if a Region concludes that departure from these guidelines is warranted because of special circumstances, it should first consult with Director Gerald Kobell of Region 6, prior to taking any action.
- B. Region 6 will continue to coordinate and monitor processing of these cases. Region 6 will also consider whether consolidation or clustering of cases for trial or seeking remedial relief on a wider basis is appropriate. In order to maintain oversight of these cases, each Region should send Region 6 copies of dispositions (withdrawal approval letters, settlement agreements, draft complaints, and ALJDs) in all refusal-to-provide-information cases filed against the USPS.
- C. Prior to taking any final action on cases involving the violation of any provisions(s) of outstanding court judgments regarding the USPS' refusal to provide information, Regions are to contact the Contempt Litigation and Compliance Branch. Revised OM 03-18, Attachment 3, lists the current outstanding court orders involving refusal-to-provide-information violations. Updated information concerning any subsequent judgments entered against the USPS can be obtained by utilizing the Appellate Court Case Lookup System. See OM 03-04, dated October 18, 2002.

XVII. Wal-Mart Stores, Inc. and Sam's Club

- A. The United Food and Commercial Workers Union has initiated a national effort to organize employees of Wal-Mart Stores, Inc. and Sam's Club throughout the United States. In addition, other unions have attempted to organize other Wal-Mart Stores, Inc. and Sam's Club employees.
- B. Regions are reminded of the outstanding instructions for charges involving Wal-Mart Stores, Inc. and Sam's Club, contained in OM 00-24, issued on April 11, 2000. In particular, until further notice, Regions should take no final action (i.e., issuance of complaint, dismissal, solicitation of withdrawal, or approval of a settlement agreement) regarding Wal-Mart Stores, Inc., or its subsidiaries, including Sam's Club, absent clearance from the Division of Advice.
- C. Regions should continue to forward copies of all unfair labor practice charges and representation cases involving Wal-Mart Stores, Inc, its subsidiaries, including Sam's Club, to the Division of Advice and to

the Division of Operations-Management, attention Deputy Assistant
General Counsel Joseph J. Baniszewski.

/s/
R. A. S.

cc: NLRBU

MEMORANDUM OM 03-57

Appendix to OM 03-30

Case Names

<u>Armored Transport, Inc.</u>	DAGC Joseph Baniszewski
<u>Beck Cases Involving the Thomas Havey Accounting Firm</u>	Region 6 and DAGC Jane Schnabel
<u>Beverly Enterprises</u>	Region 6 and DAGC Jane Schnabel
<u>Cintas Corporation</u>	Region 4 and AGC Jim Paulsen
<u>Great Atlantic News, L.L.C. a/k/a The Newsgroup, Inc.</u>	Region 6 and DAGC Jane Schnabel
<u>Greyhound Lines, Inc.</u>	
Compliance Issues	Region 32
Agreement interpretation and background	Region 30
1990 strike cases	AGC Shelley Korch
<u>International Union of Elevator Constructors (IUEC)</u>	Region 17 and DAGC Yvette Hatfield
<u>J. D. Steel Co., Inc. (J. D. Steel)</u>	Region 25 and AGC Shelley Korch
<u>Midwest Air Traffic Control Services</u>	Region 9 and DAGC Helen Marsh
<u>Overnite Transportation and IBT --</u>	
Compliance with 8(b)(4) settlement stipulation	Region 9 and DAGC Helen Marsh
<u>Pacific Maritime Association (PMA)</u>	
<u>International Longshore and Warehouse Union (ILWU)</u>	DAGCS Charles Posner or Joe Baniszewski
<u>R.J.Corman, Inc.</u>	Region 8 and DAGC Gary Muffley
<u>Sprint/CWA</u>	Region 25 and AGC Shelley Korch
<u>UPS/Teamsters – Issues relating to accretion</u>	Region 9 and DAGC Helen Marsh
<u>USPS</u> – Refusal-to-provide- information cases	Region 6 and DAGC Jane Schnabel

**Wal-Mart Stores, Inc.
and Sam's Club**

DAGC Joe Baniszewski

Issues

“Salting” Cases

DAGC Hugo Voogd